

CITY COUNCIL MEETING
June 28, 2007, 8:30 a.m.

CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
COUNCIL CHAMBERS, CITY HALL

The City Council of the City of Abilene, Texas, met in Regular Session on June 28, 2007, at 8:30 a.m. in the Council Chambers at 555 Walnut Street. Mayor Archibald was present and presiding with Councilmen Sam Chase, Stormy Higgins, Joe Spano, Anthony Williams, Councilwomen Laura Moore and Celia Davis. Also present were City Manager Larry Gilley, City Attorney Dan Santee, City Secretary Jo Moore, and various members of the City staff.

Mayor Archibald asked those present to remember the family of Betty Ray, who passed away Tuesday. Mrs. Ray was a former councilmember, civic leader and community volunteer. The Mayor also asked that the families of the nine South Carolina firefighters, who recently were killed in the line of duty be remembered.

Councilman Spano gave the invocation.

Mayor Archibald introduced Megan Scott who led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas. Megan is the six year old daughter of Carl and Renee Scott, Recreation/Senior Citizen Administrator and Assistant City Secretary.

The Mayor noted the large amount of rainfall received has allowed the water restriction to be lifted to now allow for twice a week watering but the Mayor urged everyone to continue to water no more than once a week.

DISPOSITION OF MINUTES

2.0 Mayor Archibald stated Council has been given the minutes from the June 7, 2007 Council Workshop and the June 14, 2007 Regular Council Meeting. There being no corrections, additions, or deletions to the minutes Councilwoman Moore made a motion to approve the minutes as presented. Councilman Williams seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Williams, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

CONSENT AGENDA

Item 3.1 *Oral Resolution authorizing the City Manager or his designee to renew the contract for professional services with Holmes Murphy & Associates, employee benefits consultants, was removed from the Consent Agenda to be considered separately at the request of Councilman Chase.*

Item 3.2 *Oral Resolution authorizing staff to negotiate and enter into an Energy Conservation Performance Contract with TAC Energy Solutions (CB-7014), was removed from the Consent Agenda to be considered separately at the request of Councilman Chase.*

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Councilman Spano made a motion to approve consent agenda items 3.3 and 3.4, final reading of item 3.5 and first reading of items 3.6 through 3.11, as recommended by staff. Councilwoman Davis seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Williams (abstaining on Item 3.5 only), Spano, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

ABSTAINED: Councilman Williams (Item 3.5)

Resolutions:

- 3.1 **Removed from the Consent Agenda and considered separately:** Oral Resolution authorizing the City Manager or his designee to renew the contract for professional services with Holmes Murphy & Associates, employee benefits consultants.
- 3.2 **Removed from the Consent Agenda and considered separately:** Oral Resolution authorizing staff to negotiate and enter into an Energy Conservation Performance Contract with TAC Energy Solutions (CB-7014).
- 3.3 Resolution suspending the Atmos Energy Corp., Mid-Tex Division Gas Reliability Infrastructure 2006 Program (GRIP) rate increase.

The Resolution is numbered **23-2007** and captioned as follows:

A RESOLUTION BY THE CITY OF ABILENE, TEXAS SUSPENDING THE JULY 30, 2007 EFFECTIVE DATE OF THE PROPOSAL BY ATMOS ENERGY CORP., MID-TEX DIVISION TO IMPLEMENT INTERIM GRIP RATE ADJUSTMENTS FOR GAS UTILITY INVESTMENT IN 2006; AUTHORIZING PARTICIPATION WITH THE ATMOS CITIES STEERING COMMITTEE ("ACSC") IN A REVIEW AND INQUIRY INTO THE SUFFICIENCY OF THE FILING AND THE BASIS OF THE PROPOSED RATE ADJUSTMENTS; AUTHORIZING INTERVENTION IN ADMINISTRATIVE AND COURT PROCEEDINGS INVOLVING THE PROPOSED GRIP RATE ADJUSTMENTS; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT RATEMAKING COSTS; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

- 3.4 Resolutions Directing Publication of: 1) Notice of Intention to Issue Combination Tax and Revenue Certificates of Obligation, Series 2007, and; 2) Notice of Intention to Issue Combination Tax and Airport Revenue Certificates of Obligation, Series 2007, and; 3) Approve General Obligation Bond Projects for the sale.

The Resolution is numbered **24-2007** and captioned as follows:

DIRECTING PUBLICATION OF NOTICE OF INTENTION TO ISSUE COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION, SERIES 2007.

The Resolution is numbered 25-2007 and captioned as follows:

DIRECTING PUBLICATION OF NOTICE OF INTENTION TO ISSUE COMBINATION TAX AND AIRPORT REVENUE CERTIFICATES OF OBLIGATION, SERIES 2007.

Ordinances:

- 3.5 An ordinance approving the execution of a Developer Participation Contract with Abilene Christian University to allow the City to contribute labor and equipment toward the completion of certain public improvements.

The Ordinance is numbered 25-2007 and captioned as follows

AN ORDINANCE APPROVING THE EXECUTION OF A DEVELOPER PARTICIPATION CONTRACT BETWEEN THE CITY OF ABILENE AND ABILENE CHRISTIAN UNIVERSITY FOR THE PURPOSE OF MAKING CERTAIN PUBLIC IMPROVEMENTS AS AUTHORIZED BY LAW.

- 3.6 **Z-2007-12** - Request to rezone property from RS-6 (Residential Single-family) to LC (Limited Commercial), property located at 842 N. Mockingbird Lane; and set a public hearing for July 12, 2007 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.7 **Z-2007-13** - Request to rezone property from RM-2/COR (Residential Multi-family with Corridor Overlay) to O/COR (Office with Corridor Overlay), located at 7557 Buffalo Gap Road; and set a public hearing for July 12, 2007 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.8 **Z-2007-14** - Request to rezone the base zoning of property from RM-2 (Residential Multi-family) and O (Office) to CB (Central Business), located between Grape and Mulberry Streets from North 3rd to North 6th Streets, between Mulberry and Beech Streets from North 4th to North 6th Streets and the east side of Beech Street from North 5th to North 6th Streets; and set a public hearing for July 12, 2007 at 8:30 a.m.

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AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.9 **Z-2007-15** - Request to rezone property from AO (Agricultural Open Space) to RS-6 (Residential Single-family), located at the eastern extension of Lewis & Clark Trail and the southern extension of Trinity Lane; and set a public hearing for July 12, 2007 at 8:30 a.m.

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING CHAPTER 23, SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

- 3.10 **TC-2007-04** - Request to abandon Fair Drive between E. Highway 80 and Sandy Street, and the west 660 feet of Sandy Street; and set a public hearing for July 12, 2007 at 8:30 a.m.

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF A PORTION OF PUBLIC RIGHT OF WAY; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH ABANDONMENT, AND CALLING A PUBLIC HEARING.

- 3.11 **TC-2007-05** - Request to abandon Lynn Avenue from N. Treadaway Boulevard east to the railroad right-of-way; and set a public hearing for July 12, 2007 at 8:30 a.m.

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF A PORTION OF PUBLIC RIGHT OF WAY; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH ABANDONMENT, AND CALLING A PUBLIC HEARING.

Item 3.1 considered separately at the request of Councilman Chase:

- 3.1 Ronnie Kidd, Director of Administrative Services briefed the Council on staff's recommendation that the City Manager or his designee be authorized by Oral Resolution to renew the contract for professional services with Holmes Murphy & Associates, employee benefits consultants.

During the period July 1, 2006 through June 30, 2007 the City has contracted with Holmes Murphy and Associates, employee benefits consultants, to analyze and advise regarding the City of Abilene health plan and its programs and to make recommendations pertaining to the self-insurance fund. Holmes Murphy provided a broad scope of services and the plan performance analysis and consultation continues. Staff anticipates another update to Council in July regarding the current plan year results and plan to continue working with Holmes Murphy to look at plan design and contribution strategies for the 2008 plan year. Staff recommends that Council authorize the City Manager or his designee to renew the contract with Holmes Murphy &

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Associates for the period beginning July 1, 2007 and running through June 30, 2008. Scope of services will remain broadly defined as in the original proposal for the flat annual fee of \$40,000, payable \$10,000 per quarter.

Councilman Chase commented on the good services provided by Holmes Murphy in the past year and stated hopefully when the six month period is up the City will have good results because a considerable amount of money has been lost in our self-insurance plan. Councilman Chase further stated the firm was hired a year ago and that the City is only six month's into the new plan but is now considering renewing the contract for another year. Councilman Chase questioned what the cost of the contract was last year. Mr. Kidd stated it was the same amount, \$40,000 for the year. Councilman Chase asked if the City had negotiated with the firm on what services they will provide this year versus what they provided last year. Mr. Kidd responded the City has been provided a document from the firm that defines the scope of services and it is basically the same as was in last years agreement and was in the Request for Proposal that was sent out last year. Mr. Kidd noted it is broadly defined and any of the services that the City wants to engage in are available for the flat fee even if the City goes back to the market or the insurance carriers the firm would assist in drafting request for proposals or any of those types of services. Councilman Chase stated that if the City doesn't want to go back and make changes then the firm does not have to do the large amount of investigative work that was done last year, yet the firm will be paid the flat fee (same amount) that they were paid last year based on the possibility that the City might need the work done this year. Mr. Kidd stated that only pertains to going back to the market and the other services would continue to be provided (i.e. the ongoing analysis, claims, modeling of plan design, etc.). Mr. Kidd further stated the City will be going to the market to see if there are any opportunities for alternatives for retiree coverage and that the contract covers a whole listing of services and the RFP component, for insurance coverage, is just one in the scope of services. Councilman Chase reiterated the fact that Holmes Murphy did a good job last year in the services they provided but since they will be providing the same similar services this year, in a comparative method it doesn't make since that they may not do a fourth of what they did last year and yet a flat rate contract for the same amount is being awarded. Councilman Chase stated his concerns that no RFP was done to see if another firm could provide the services at a less amount and that although it may not be a lot it is still \$40,000.00 of tax payers money. Mr. Kidd stated that if Holmes Murphy had billed the City hourly last year he feels the amount would have been substantially more. Councilman Chase questioned if this years proposed contract was an attempt to then make up the difference in the amount that the firm could have charged last year. Mr. Kidd responded the contract is a flat fee proposal. Councilman Chase stated that although it is a good business decision to deal with Holmes Murphy it is not a good business decision to have not negotiated a reasonable fee with them for this years contract which could have resulted in less cost to the City, due to less services being provided. Councilman Chase stated he would propose that this item be tabled and have Mr. Kidd negotiate a reasonable fee with Holmes Murphy for a six month arrangement till the end of this plan year.

Council and staff discussion included: 1) the first analysis of this having been covered in a recent Council workshop and the impressive data that was provided, and the benefit to the City in not changing vendors mid-stream; 2) the framework having been established but analysis will continue; 3) the need to possibly in the future, after a complete year of data, consider a negotiated fee with Holmes Murphy; 4) possibly considering a six month contract with Holmes Murphy; 5) this being considered an investment not an expenditure, and; 6) Council stating the City hired

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Holmes Murphy and they have done a good job and they should be allowed to finish their work, give them another year and at the end of that time Council will review all issues for consideration.

City Manager Larry Gilley referenced the scope of services provided by Holmes Murphy as listed in the Council's agenda packet and stated the only service listed that the City perhaps will not have the firm do for this contract period is the preparation of a formal RFP. Mr. Gilley stated the City will be reviewing the retiree program this year and the firm will be assisting in preparing the RFP and specifications for that particular component of the employee health insurance program. Mr. Gilley further stated he believes Holmes Murphy will be providing almost as many services, this contract period, as they did last year with the potential exception of doing a formal RFP to go out and review the market again next year. Mr. Gilley stated it his opinion that this is a good business decision, with a good relationship with a reputable company that has done good work for the City and that the proposed fee is a fair amount for the services that are being requested. Mr. Gilley also stated he would be somewhat reluctant to negotiate a six month contract until the plan year ends on December 31st due to transition of any kind, and transition is anticipated with the retiree program, requiring assistance during that transition period to establish a new plan year in January.

Councilman Williams made a motion to approve by Oral Resolution authorizing the City Manager or his designee to renew the contract for professional services with Holmes Murphy & Associates, employee benefits consultants, as recommended by staff. Councilwoman Davis seconded the motion, and the motion carried.

AYES: Councilmen Higgins, Spano, Williams, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: Councilman Chase (noting "for the reasons stated").

Item 3.2 considered separately at the request of Councilman Chase:

3.2 Odis Dolton, Assistant Director of Finance briefed the Council on the recommendation that Council authorize staff by Oral Resolution to negotiate and enter into an Energy Conservation Performance Contract with TAC Energy Solutions (CB-7014).

Over the last two years, the City through the Energy Conservation Committee has been discussing with other Texas cities, school districts and State organizations that have participated in the performance contracting process. On December 19, 2006, an invitation to participate through a Request for Qualifications (RFQ) was sent out to four of the top Energy Service Companies (ESCOs) in the State of Texas. Three of those four ESCOs (Johnson Controls, Siemens and TAC Energy Solutions) responded to the City's RFQ. APS Energy Services, the fourth ESCO chose not to respond. ESCO RFQs were reviewed, interviews were conducted and TAC was selected by the committee to negotiate a contract. As part of the contract negotiation between the ESCO and the City: the ESCO would provide performance contract education or workshops; work with City staff in coming up with projects through out the City; complete various levels of audit reviews to determine savings; develop a measurement and verification (M&V) plan to guarantee savings; complete the scope of the contract; implement the project; implement M&V process and end the first series of projects. Debt would be issued for energy conservation projects and be paid for through energy savings generated by the upgrades recommended by the Energy Service Company

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(ESCO). Staff recommends Council approve by Oral Resolution authorizing staff to negotiate and enter into a contract with TAC Energy Solutions.

Councilman Chase asked Mr. Dolton who the Energy Conservation Committee is comprised of. Mr. Dolton stated the ECC is made up of city employees representing each department and that the committee has existed for several years and their responsibility is to look at all areas of energy issues for the City. Mr. Dolton further stated there are no citizens, council members or elected officials on the committee but the committee would welcome involvement from those individuals. Mr. Dolton explained the function of the committee stating they prepare the RFP and send it out to a number of entities, review the RFPs and then invite the top three for an interview, then make a recommendation as is now before Council. Councilman Chase questioned who TAC is. Mr. Dolton briefed the Council on TAC Energy Solution and explained their functions, and noted local representative Jeff Canterbury is present for specific questions concerning their company. Councilman Chase noted he is not familiar with TAC but is aware of Siemens, and stated concerns that he understood that this is an item that Council had discussed several times about having one or two members of the Council, possibly Councilman Spano or Councilwoman Davis, and/or citizens attend the interviews and be involved in this process to assure that the big picture items were reviewed and appropriate input provided. Mr. Dolton stated staff is open to having councilmember representatives as part of the negotiation process.

Council and staff discussion included: 1) this issue concerns Council authorizing staff to enter into discussions, with no funding considerations at this point; 2) the RFQ responses were very similar with the interview process being the determination of recommendation; 3) all of the companies are financially sound, and have similar experiences; 4) staff explained debt issuing for the conservation projects being through several financing mechanisms options and noted determinations are made once a project is decided; 5) staff noted avoiding extra expense is the benefit of energy savings to the City, and; 6) Council wanting to see why specific project recommendations are made.

City Manager Larry Gilley stated that although the Council is welcome to participate on the Energy Conservation Committee he does not agree that a Councilmember should be appointed to the ECC. Mayor Archibald noted the responsibilities of the role of Councilmember and the role of management and stated he feels this issue is a management decision. Councilman Chase stated at the very least due to the big policy perspective, and with Council being the policy decision makers, that Council should ask the City Manager to have the Energy Conservation Committee bring the various alternatives to Council in a workshop environment, before decisions are made in terms of negotiating contracts and determining which projects to do or not do. David Wright, Director of Finance stated that action is part of the process and that there will be a reporting back to Council throughout this process and Council will authorize the moving forward on the projects. Councilman Chase stated there may be projects that Council would want to review but without meeting in a workshop setting alternatives to the projects may never be known by Council. Mr. Wright stated part of the role of TAC Energy Solutions is to bring forward all the different types of projects that seem feasible to do and those would be brought to Council. Councilman Chase stated in reality input early on into what the alternatives are will provide the Council the ability to understand the potentials and as the policy makers Council can then make the best decisions.

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Mr. Gilley stated this is a perfect type of issue to bring to a Council workshop setting, with the opportunity for TAC to lay out their energy conservation plan, what they observed through their developing process and to give Council the opportunity to see the background information and provide input into other possible energy conservation options for the City.

Councilwoman Moore made a motion to approve by Oral Resolution authorizing staff to negotiate and enter into an Energy Conservation Performance Contract with TAC Energy Solutions and request further discussion concerning energy conservation for the City of Abilene be held during a Council workshop. Councilwoman Davis seconded the motion and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Williams, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

REGULAR AGENDA

4.1 Jon James, Director of Planning and Development Services briefed the Council on a request to appeal the denial of a Sidewalk Waiver Request for Section 6, South Lytle Addition. Mr. James reviewed the history of the Sidewalk Master Plan as follows:

Sidewalk Appeal History

- Sidewalk Ordinance Adopted: August 10, 2006
- Revised to Provide Appeal: October 12, 2006

Staff has received 9 waiver requests:

- 3 approved
- 6 denied

Mr. James noted that this is the first decision to be appealed to City Council. During the review of a Preliminary Development Plan for the subject subdivision, staff made the determination that this subdivision is required to include sidewalks per the requirements of the City's Sidewalk Master Plan. The applicant requested a waiver of this sidewalk requirement, which was denied by the Planning Director and City Engineer. The applicant is now appealing that denial to the City Council. The applicant based the request on the following two issues:

1) Issue: High cost of sidewalk construction

Staff Response: The Sidewalk Master Plan allows for a waiver where "the cost of establishing sidewalks or walkways would be **unreasonably disproportionate** to the cost of the associated roadway construction or overall project costs." Unreasonably disproportionate is defined by the ordinance as "exceeding 20% of the cost of the larger project." However, the actual calculation per the Sidewalk Master Plan should include all project costs, which in this case should include all of the costs of site preparation and home construction, since the sidewalks are not required to be

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constructed until the time of building. Regardless of calculation methodology, this project's sidewalk costs do not exceed 20%.

2) Issue: Extension of an existing subdivision

Staff Response: The Sidewalk Master Plan exempts "existing single-family residential neighborhoods where sidewalks are not present..." This exemption does not apply to new development, even if it is adjacent to and an extension of an existing subdivision. While most cities require sidewalks everywhere, those that exempt existing development do not apply this exemption to any new subdivisions (including Lubbock and Wichita Falls).

Mr. James presented the following information:

Overview of Recommendations:

- Sidewalks required for all new development, except:
 - Local streets in "rural subdivisions" (lots > 1 ac)
 - Along freeways without frontage roads
- Sidewalks required for redevelopment:
 - All arterials, collectors, and frontage roads
 - Local streets, except:
 - Existing single-family neighborhoods without sidewalks
 - Industrial or AO zoned areas
- Sidewalk Requirement triggered by:
 - any land development or subdivision that triggers street improvements
 - any development requiring a site plan approval, or
 - prior to the issuance of a certificate of occupancy.

How is this different from Heritage Park?

Heritage Park had an approved Preliminary Plat that "vested" them under rules prior to the sidewalk requirement. However, a required change to the drainage system resulted in the invalidation of their entire Preliminary Plat. A rezoning to PDD was used to essentially allow the continuation of their vested status with respect to sidewalks for the area covered by the original Preliminary Plat. The subject property has never had an approved Preliminary Plat or Preliminary Development Plan.

Practical impact of granting this request:

The applicant notes that this plat is for 32 lots adjacent to 89 previously created lots without sidewalks. However, this is simply the next phase in what will likely be hundreds or thousands of lots over the coming years. Will we exempt any subdivision adjacent to existing development without sidewalks? Or only those with the same subdivision name? Or only those by the same owner? If this request is granted, where is the line drawn?

What about the lack of connectivity to anything else?

- Sidewalks are beneficial for use within the subdivision, even if they don't immediately connect outside the subdivision.

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- Over time, either owners of adjacent properties or the City will likely fill in some of the gaps to create additional connectivity.
- If the goal is to begin building a sidewalk network, you have to start somewhere.

What about bike paths or other alternatives?

- The Sidewalk Master Plan contemplates “deviations” from the technical requirements based on circumstances where there is good cause.
- However, such a deviation is not a waiver and the intent of providing a safe, accessible place for pedestrians separated from motor vehicles should still be met.

Public Support for Sidewalks

- In Abilene, 85% of respondents ‘support’ or ‘strongly support’ requiring “new development to construct sidewalks”.
City of Abilene Comprehensive Plan Survey, 2003
- 55% of respondents “would be willing to contribute money toward the installation of sidewalks in [their] neighborhood.”
City of Abilene Community Survey, 2006

Staff recommends denial of the waiver appeal request based on the reasons outlined above and as addressed in staff’s response letter to the applicant, dated June 1, 2007, as submitted in Council’s agenda packet.

Mayor Archibald opened a public hearing on the item and the following individuals addressed the Council:

- Tal Fillingim, Jacob & Martin, LTD., Consulting Engineers and agent for Bruce Bixby, proponent. Mr. Fillingim stated for City Council to approve a sidewalk waiver the Sidewalk Ordinance states that Council must make findings based on criteria outlined in the Ordinance. One of the criteria states a waiver can be approved in a situation where an applicant can show factors or circumstances amounting to reasonably, justifiable good cause to support such a waiver. Mr. Fillingim stated the following four reasons that he believes collectively amount to reasonably, justifiable good cause to support the waiver:
 - 1) The proposed Section 6 of the existing South Lytle neighborhood is simply an extension of an existing neighborhood, where sidewalks are not present and have not historically been provided.
 - 2) This neighborhood is a small lot subdivision, zoned RS-6 as is the surrounding existing South Lytle neighborhood, which is the smallest standard single family lot size. In this type of subdivision there are typically smaller building set backs from the streets which does not always allow for the unimpeded use of sidewalks, since it would be blocked by vehicles and other items.
 - 3) The construction cost of sidewalks for this extension is between 16% and 19% of the total construction cost of the infrastructure. This is very close to the 20% that has been outlined as unreasonably disproportionate in the Ordinance.
 - 4) The developer that is laying out, designing, paying for all of the infrastructure improvements does not want sidewalks within this section of the subdivision.

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He wants to develop the subdivision in the same manner as he has in the past (existing South Lytle neighborhood).

- Mark Horne, Project Manager. Mr. Horne stated his justifiable cause is the difference in the profit margin (before the sidewalk cost it would be a 12% profit margin on the lots, after the sidewalk cost it would be about a 3 ¾ % profit margin). Mr. Horne further stated he will not recommend this project to Mr. Bixby for investment at 3 ¾% return. It's reasonable that things are done for starter lots like these to maintain the affordability for the homes and a break on the sidewalks is needed to make the project viable. Mr. Horne stated in the future Mr. Bixby wants to include bicycle paths in his master plan, but it takes a long time and lot of effort to put those things in. Mr. Horne stated the homes in this subdivision will not appraise for anymore with sidewalks and requested Council approve the waiver.
- Aaron Waldrop –Developer Park Side Place. Mr. Waldrop stated 104 houses have been sold in the past 12 months without sidewalks. Mr. Waldrop noted that sidewalks cost about \$1,500.00 and an appraiser will not give credit on an appraisal for the cost of the sidewalk. Mr. Waldrop suggested to Council if sidewalks are required that the builders be given credit in some form toward the cost of the sidewalks (i.e. permit waivers). Mr. Waldrop further suggested the City utilize previously approved bond money in the form of tax reductions, tax credit, etc. to return the \$1,500 sidewalk cost to the person(s) that built the sidewalks.
- Eddie Chase - addressed the additional cost of \$1,500.00 for sidewalks as being astronomical and the impact of the cost for the loss of land for detention and drainage. Mr. Chase stated the Sidewalk Ordinance should allow for smaller lots to be built without the detrimental cost of the sidewalks

There being no one else present and desiring to be heard Mayor Archibald closed the public hearing.

Discussion included: 1) the approximate cost of the homes and lots in the area; 2) the deviation process (creating easements for bike/horse trails being limited due to other regulations; 3) homes with sidewalks not appraising for more than those without sidewalks; 4) Council stating concerns that the sidewalk policy resulted from community support and noted the difficulty of considering an exception now; 5) possibility of a designated green space or other type compromise for the area; 6) Mr. Horne nor Mr. Bixby having been involved in the process that led to the Sidewalk Ordinance; 7) the confusion with some of the language in the ordinance and the possibility of the ordinance being reviewed for further consideration; 8) zoning must now be established prior to a preliminary development plan being submitted; 9) Council having previously discussed, but not implemented, incentives, credits on infill development; 10) Council looking to developers for answers on some sidewalk issues, and; 11) staff noted unless an area is zoned the big picture preliminary development plan cannot be obtained as it could in the past. The City consultants are reviewing possibilities (i.e. if a builder is willing to submit a preliminary plan then perhaps it could be considered) and hopefully the new development code will provide solutions to some of those issues.

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City Attorney Dan Santee stated when you go back to the point at which the preliminary plat was submitted and reviewed, then the guidelines, development principals and regulations that were applied that were in place at that time, may or may not still be the desire of the Council or staff 15 to 20 years later when someone decides they are going to develop it. Mr. James noted there is also an issue if a formal approval is given to a preliminary development plan, which could be considered an acknowledgment that that density of development is appropriate, when that decision hasn't been made through the statutory defined process (the zoning process).

Mr. James addressed Council's question concerning the review of potential incentives for developers. Mr. James noted staff is reviewing these infill issues and that it would have to be determined to what extent the City is willing to subsidize development cost since taxpayers would be asked to give up what would have been revenue that would go to the developer/builder to pay them back for their costs.

Councilwoman Davis made a motion to approve the Sidewalk Waiver request for Section 6, South Lytle Addition based on the following findings of fact as allowed under **F. Exceptions & Waivers** of the Sidewalk Master Plan, F.1 (a.) projects where the cost of establishing sidewalks or walkways would be unreasonably disproportionate to the cost of the associated roadway construction or overall project costs, and (d) situations where an applicant can show other factors or circumstances amounting to reasonably justifiable good cause to support such waiver, and to refer the Sidewalk Master Plan Ordinance back to Committee and to the Planning & Zoning Commission for review and evaluation. Councilman Chase seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano (stating "with reservations"), Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: Councilman Williams

Council and staff discussed the need for the review and evaluation of the Sidewalk Master Plan Ordinance process to begin immediately and to involve builders and citizens to work together on solutions to issues as discussed today.

EXECUTIVE SESSION

Mayor Archibald noted following a ten minute break Council would convene into Executive Session pursuant to Sections 551.071, 551.072, 551.074, and 551.087 of the Open Meetings Act, to seek the advice of the City Attorney with respect to pending and contemplated litigation, to consider the appointment and evaluation of public officers, to consider the purchase, exchange, lease or value of real property, and to discuss contemplated business prospects and or economic development matters.

Councilman Williams left the meeting during the Executive Session.

The Council reconvened from Executive Session and reported no votes or action was taken in Executive Session.

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5.5 Councilman Higgins made a motion to approve Mayor Archibald's appointment of Robert Carleton to the Library Board, term expiring November 2007. Councilman Spano seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

5.6 No action was taken on an appointment to the Housing Authority Board.

5.7 City Attorney Dan Santee briefed the Council on the appointment of Stanley Smith as an Assistant City Attorney for the City of Abilene. Councilwoman Davis made a motion to approve by Oral Resolution the appointment of Stanley Smith as an Assistant City Attorney. Councilwoman Moore seconded the motion, and the motion carried.

AYES: Councilmen Chase, Higgins, Spano, Councilwomen Moore and Davis, and Mayor Archibald.

NAYS: None

There being no further business, the meeting was adjourned at 11:35 a.m.

Jo Moore
City Secretary

Norm Archibald
Mayor